

## II. REMARKS

In response to the Office Action of December 14, 2009, the Examiner is requested to reconsider the application in view of the amendment and remarks set forth below. It is believed that the amendment does not add new matter and that the amendment places the application in better condition for allowance or appeal.

Claims 1-45 are currently pending, and claims 17-45 have been made subject to a restriction requirement that has been traversed, and thus these claims are listed as withdrawn.

In the Office Action, on page 2, paragraph 6, claim 10 has been rejected pursuant to 35 U.S.C. Sec. 101. The Examiner contends that the claimed invention is directed to non-statutory subject matter for reasons set out in the Office Action.

In response, the rejection is respectfully traversed. The rejection is premised on the PTO's interpretation of *In re Bilksi*, which has been appealed to the U.S. Supreme Court. Normally the Supreme Court does not take a case to affirm it, and Applicant therefore disputes the rejection, and thus Applicant requests that the amendment be entered without prejudice pending the *Bilksi* decision.

Applicant has also amended claim 15 to remove "means for" language in view of recent court decisions which make it difficult to predict how a claim may be interpreted.

In the Office Action, on page 4, paragraph 5, claims 1-16 have been rejected under 35 U.S.C. 103(a). The Examiner contends that the claims are unpatentable over CRISTOFICH et al. (6,173,270), in view of "A Consumer's Guide To Mortgage Lock-Ins," hereinafter Mortgage-X. In response to Applicant's traversal of the rejection as improper pursuant to 35 U.S.C. Sec. 132 and Rule 104, the Examiner has relied on newly cited the "Dictionary of Finance and Investment Terms" definition. The rejection has been made final.

In response, it is respectfully submitted that this is a premature final rejection, and

withdrawal of the final rejection is requested. The prior rejection did not comply with Sec. 132 and Rule 104, and entering the final rejection denies Applicant the fair opportunity to respond.

Applicant requests an Interview.

Additionally, neither CRISTOFICH nor Mortgage-X mentions “an option on a loan.” See Office Action 2/18/2009, page 7. Thus, the rejection depends at least in part on the Examiner’s newly cited Dictionary of Finance and Investment Terms”.

However, the Examiner’s newly cited Dictionary of Finance and Investment Terms” contradicts the obviousness rejection. The definition states that an option is the “right to buy or sell property....” Before closing, a loan is not property - or at least the Examiner has not shown otherwise. At page 6 of the Office Action, the Examiner points to the definition of “securities”. A loan has not been shown to be a security, especially before closing - or at least the Examiner has not shown otherwise. Mortgage-X pertains to loan origination. Mortgage-X states, at page 1-2, that “a lock-in... is a lender’s promise... while your loan application is processed.” As such, the lock-in of Mortgage-X is not like a stock option in CRISTOFICH, at least because the stock of CRISTOFICH exists as property at the time of the option, but the loan of Mortgage-X has yet to be originated and is therefore not property, or has not been shown otherwise by the Examiner. The newly cited definition contradicts the Examiner’s rejection and is evidence of unobviousness which must be considered. The final rejection is also premature, for this reason.

Applicant also disputes the reasoning by analogy as a basis for determining obviousness. What is necessary and missing from a prima facie showing of obviousness is a reason to combine or modify, and the Dictionary definition does not provide it – and indeed contradict or teach away from it.

Additionally the Examiner has not shown how triggering execution of an option under CRISTOFICH would not be contradicted by executing a lock-in, i.e., loan origination, of

Mortgage-X. This is the PTO burden in establishing a reason to combine or modify, and the burden has not been met.

Further, Applicant does not see how Mortgage-X would have a trigger subject to the computer operations set out in the claims and Applicant maintains the traversal of obviousness set out in the Amendment and Response filed on August 14, 2009. Applicant does not concede that Mortgage-X is prior art, again requests an interview, but respectfully submits that the rejection is improper for failure to set out a prima facie case of obviousness.

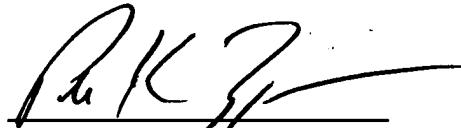
### III. CONCLUSION

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

**APPLICANT CLAIMS SMALL ENTITY STATUS.** The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235.

Please direct all correspondence to the undersigned at the address given below.

Respectfully submitted,



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